

**DOCKETED**

**08-AFC-8A**

**TN # 2918**

**FEB. 06 2013**

STATUS CONFERENCE  
BEFORE THE  
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the:	)	
	)	
Amended Application for Certification	)	Docket No.
for the Hydrogen Energy California	)	08-AFC-08A
Project	)	
_____	)	

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 16, 2013  
10:30 a.m.

Reported by:  
John Cota  
Contract No. 170-09-002

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

Andrew McAllister, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Raoul Renaud, Hearing Officer

Galen Lemei, Advisor to Commissioner Douglas

Jennifer Nelson, Advisor to Commissioner Douglas

Patrick Saxon, Advisor to Commissioner McAllister

Eileen Allen, Commissioners' Technical Adviser for Facility  
Siting

CEC STAFF PRESENT

Lisa DeCarlo, Staff Counsel

John Heiser, Assistant Project Manager

Robert Worl, Project Manager

OFFICE OF THE PUBLIC ADVISER

Blake Roberts, Assistant Public Adviser

APPLICANT

Michael J. Carroll, Attorney  
Latham & Watkins

George Landman  
Mark Lerdal  
Marisa Mascaro (via WebEx)  
Hydrogen Energy California

Dale Shileikis (via WebEx)  
URS Corporation

INTERVENORS

Andrea Issod (via WebEx)  
Kern-Kaweah Chapter of the Sierra Club

GOVERNMENTAL AGENCIES

Paul Detwiler (via WebEx)  
United States Department of Energy (DOE)

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P R O C E E D I N G S

10:36 a.m.

HEARING OFFICER RENAUD: All right, good morning, we will now begin the status conference. This is the Hydrogen Energy California Project at the California Energy Commission. My name is Raoul Renaud, I am the Hearing Officer assigned to this matter. We are meeting here in Hearing Room A in Sacramento at Energy Commission headquarters.

We have a number of representatives of parties here in the room and we also have a number of people participating by telephone through our WebEx system. I think we'll start out with introductions first so we all know who is here and then we'll review the agenda and then get into our discussions.

Sitting here at the dais to my immediate left is Karen Douglas, the Presiding Member of the Committee, and to her left is Galen Lemei and Jennifer Nelson her advisors. Also at the far end of the dais is Eileen Allen, the Commissioners' technical advisor for facility siting. To my right is Andrew McAllister, Commissioner and Associate Member of the Committee, and to his right is Pat Saxton, his advisor.

Let me ask for those in the room to introduce themselves starting with applicant.

1 MR. CARROLL: Yes, Mike Carroll with Latham &  
2 Watkins on behalf of the applicant.

3 MR. LERDAL: Mark Lerdal from the applicant.

4 MR. LANDMAN: George Landman with the applicant.

5 HEARING OFFICER RENAUD: Thank you.

6 MR. CARROLL: Mr. Renaud, also from the applicant,  
7 Marisa Mascaro, Senior Vice President for Legal and  
8 Regulatory Affairs is on and also Dale Shileikis, Senior  
9 Vice President with URS, the applicant's consultant, is on  
10 the phone.

11 HEARING OFFICER RENAUD: Great, thank you. And  
12 staff?

13 MS. DeCARLO: Lisa DeCarlo, Energy Commission  
14 staff counsel.

15 MR. WORL: Bob Worl, project manager. Also we  
16 have the assistant project manager, John Heiser, and a  
17 number of technical staff who we can introduce if it becomes  
18 appropriate.

19 I also wanted to mention that Paul Detwiler from  
20 the Department of Energy was going to call in and be on the  
21 line and I'm wondering if he is, in fact, with us.

22 HEARING OFFICER RENAUD: He is appearing here on  
23 the screen and is present, thank you. And we'll get to  
24 introductions from the phone-in people in a moment.

25 I also want to introduce in the room Blake -- I'm

1     sorry, I've forgotten your last name, I know it's Blake.

2             MR. ROBERTS:   It's Blake Roberts.

3             HEARING OFFICER RENAUD:   Roberts.

4             MR. ROBERTS:   Yes, the Assistant Public Adviser.

5             HEARING OFFICER RENAUD:   Very good, thank you very  
6 much.   And now let's turn to those participating by phone.  
7 Are there any of the parties, that is intervenors, who would  
8 introduce themselves, please?

9             (No response.)

10            HEARING OFFICER RENAUD:   Any intervenors on the  
11 phone?   I am going to call roll in that case since we are  
12 not hearing from anybody.   Okay, CURE, California Unions for  
13 Reliable Energy, are you represented today?

14            (No response.)

15            HEARING OFFICER RENAUD:   Association of Irrigated  
16 Residents, Tom Frantz?

17            (No response.)

18            HEARING OFFICER RENAUD:   Sierra Club?

19            (No response.)

20            HEARING OFFICER RENAUD:   Environmental Defense  
21 Fund?

22            (No response.)

23            HEARING OFFICER RENAUD:   Natural Resources Defense  
24 Council?

25            (No response.)

1 HEARING OFFICER RENAUD: Kern County Farm Bureau?

2 (No response.)

3 HEARING OFFICER RENAUD: HECA Neighbors, Chris  
4 Romanini?

5 (No response.)

6 HEARING OFFICER RENAUD: Okay. Then if  
7 representatives of any government agency or other government  
8 entities would introduce themselves, please.

9 (No response.)

10 HEARING OFFICER RENAUD: Mr. Detwiler, are you  
11 there?

12 MR. WORL: I wonder if we have a --

13 HEARING OFFICER RENAUD: I wonder if they're muted  
14 or something? Let me see.

15 MR. WORL: Sierra Club is also on the list but  
16 didn't respond to your roll call.

17 HEARING OFFICER RENAUD: Let me just ask if  
18 anybody who is phoning in would just say something so we can  
19 make sure you can hear us.

20 (No response.)

21 HEARING OFFICER RENAUD: That's not good. All  
22 right, well we are going to just take a moment here and make  
23 sure we have the audio working correctly before we proceed.

24 Matt, it seems that they can't hear us. Okay,  
25 we've got it? All right, I'm going to begin again with roll



1 call for the intervenors. California Unions for Reliable  
2 Energy?

3 (No response.)

4 HEARING OFFICER RENAUD: Association of Irrigated  
5 Residents, Tom Frantz?

6 (No response.)

7 HEARING OFFICER RENAUD: If you're here please  
8 speak up. Sierra Club?

9 MS. ISSOD: Hi, this is Andrea Issod.

10 HEARING OFFICER RENAUD: Good, thank you. Okay.  
11 Environmental Defense Fund?

12 (No response.)

13 HEARING OFFICER RENAUD: Natural Resources Defense  
14 Council?

15 (No response.)

16 HEARING OFFICER RENAUD: Kern County Farm Bureau?

17 (No response.)

18 HEARING OFFICER RENAUD: HECA Neighbors, Chris  
19 Romanini?

20 (No response.)

21 HEARING OFFICER RENAUD: All right. Are there any  
22 other -- any representatives of government agencies on the  
23 phone who would introduce themselves, please.

24 MR. DETWILER: Paul Detwiler for the US Department  
25 of Energy.

1           HEARING OFFICER RENAUD: Thank you, sir, and  
2 welcome. Okay. And let me repeat for those who might not  
3 have heard me before, those of you who are on the phone, you  
4 may have papers on your desk, other activities you are doing  
5 there. We can hear what you are doing and it gets amplified  
6 and is pretty loud in the room in here. So if you can make  
7 an effort to keep your extraneous noises down that would be  
8 much appreciated. That will enable all of us to hear one  
9 another and to hear you. Thank you.

10           Okay, let's just briefly go over the agenda as set  
11 forth in the notice that was published for today's hearing.

12           We will hear reports from the applicant and staff  
13 and intervenors to the extent they want to provide a report  
14 regarding the status of the case and anything they wish to  
15 bring up and we will discuss scheduling issues.

16           In connection with the schedule, the Sierra Club  
17 has filed a motion to extend the discovery cutoff and so  
18 we'll discuss that in connection with the Sierra Club's  
19 motion and the schedule.

20           In addition, the Committee Members may have some  
21 issues they wish to raise with the parties.

22           After that we will proceed to a public comment  
23 period when we will allow members of the public to make  
24 comments to the committee regarding the matter.

25           And after that if necessary the Committee may

1 adjourn to a closed session for deliberation.

2 Those of you who filed status reports, we  
3 appreciate that, thank you very much, they are very helpful.

4 It was the last set of status reports that really  
5 prompted the calling of this status conference because the  
6 applicant and the staff appeared to have a disagreement over  
7 the date, the appropriate date for the publication of the  
8 PSA, the Preliminary Staff Assessment. Since that time we  
9 have received newer status reports from the parties and  
10 those indicate that there is still some disagreement between  
11 the parties, between the applicant and the staff regarding  
12 the appropriate date that we should schedule for the PSA.

13 And maybe before we get into the discussion of  
14 that I'll ask for clarification from staff. Your Status  
15 Report No. 4 indicates in the text at page three that the  
16 publication of the PDOC is expected in mid-March 2013 and  
17 that staff would require at least 30 days from that date to  
18 complete the PSA. which would take us to mid-April. You've  
19 got a suggested schedule table on page five, which indicates  
20 a PSA date of March 29. So I think we should just clarify  
21 which of those dates you want us to consider to be staff's  
22 date.

23 MS. DeCARLO: Certainly. And unfortunately we  
24 can't give you a hard date because it does depend on  
25 issuance of the PDOC so we would need at a minimum 30 days

1 from issuance of the PDOC. We have been given a range from  
2 the air district about when that might be and they have  
3 indicated, I think the latest information we have and the  
4 applicant might have some updates to this is, late February  
5 to mid-March. And so we would need 30 days from the date  
6 that is issued, at a minimum, to turn around a PSA.

7 HEARING OFFICER RENAUD: Very good, thank you.

8 Applicant is indicating a PSA publication date of  
9 March 1st with the PDOC coming out on February 1st. So you  
10 are in agreement on the 30 day part but in disagreement as  
11 to when the PDOC would be. Mr. Carroll, do you care to  
12 comment on that?

13 MR. CARROLL: Yes. There were a handful of  
14 outstanding issues with the air district; those have been  
15 put to rest. We have had extensive discussion with them  
16 over the last several weeks and as of yesterday, in fact,  
17 resolved the last outstanding issue which related to the  
18 federal conformity analysis.

19 When I spoke with Dave Warner of the air district  
20 yesterday I informed him of our need for a PDOC by February  
21 1st in order to adhere to applicant's proposed schedule. He  
22 indicated to me at that time that he did not know of any  
23 reason that they could not produce a PDOC by February 1,  
24 given that we had, at that point, resolved all outstanding  
25 issues, with the caveat that he was going to check with his

1 staff just to make sure that there wasn't something he was  
2 unaware of. So as of yesterday we were getting a positive  
3 reading from the air district staff on their ability to  
4 produce a PDOC by February 1. It doesn't sound like we have  
5 air district staff on the call today.

6 We are in agreement and we understand that the CEC  
7 staff needs 30 days between PDOC and PSA so what I would  
8 suggest is that if we could set a schedule that floats based  
9 on that. So that the PSA due date would be 30 days from the  
10 issuance of the PDOC and then it would be incumbent upon the  
11 applicant to work with the air district to get that out as  
12 soon as possible.

13 HEARING OFFICER RENAUD: All right, how does that  
14 sound to staff?

15 MS. DeCARLO: It sounds great for the Air Quality  
16 section but I don't think we can commit to anything earlier  
17 than at least mid-March for the entire PSA because we are  
18 coordinating with the Department of Energy, so that inserts  
19 a little extra time to ensure -- because this document will  
20 stand in as their Draft EIS to ensure that they're  
21 comfortable with the conclusions we're reaching in our  
22 analysis. So, you know, the end of March would be ideal for  
23 us but no sooner than mid-March for the entire package.

24 HEARING OFFICER RENAUD: Okay.

25 MS. DeCARLO: And then, obviously, depending upon

1 30 days from issuance of the PDOC.

2 PRESIDING MEMBER DOUGLAS: Ms. DeCarlo, just a  
3 quick question. Can you tell us how the coordination with  
4 Department of Energy is impacting the schedule specifically?

5 MS. DeCARLO: Nothing as of yet, we just  
6 anticipate needing to fold in a little extra review time.  
7 Our staff, Energy Commission staff, is taking the lead on  
8 writing the analysis. There are a couple of components that  
9 are specific to NEPA that will need to be inserted and  
10 provided by DOE but those are minor. Basically their  
11 purpose and needs statement, a flood plains assessment and  
12 there might be one or two other small components that  
13 they'll need to provide us to insert. But I think the main,  
14 the main need for a little extra time is just to ensure that  
15 they have time to review our analysis and are comfortable  
16 with what we're concluding.

17 PRESIDING MEMBER DOUGLAS: Okay. So you are not  
18 raising procedural steps that are different between NEPA and  
19 CEQA at this stage, you're saying that you have another  
20 agency you're coordinating with that will be reviewing the  
21 draft. And is Energy Commission staff taking the lead on  
22 drafting the NEPA-only sections or is DOE drafting those  
23 sections?

24 MS. DeCARLO: I believe DOE will be taking the  
25 helm on those.

1           PRESIDING MEMBER DOUGLAS: Thank you.

2           MR. CARROLL: That is the case, DOE -- it's not a  
3 future matter it's a past matter. DOE did take the lead on  
4 drafting the NEPA-only sections and submitted them about six  
5 weeks ago to the CEC staff and so we don't believe that  
6 there is a need for additional delay with the PSA because of  
7 the coordination because we think that's largely happened.

8           And I realize, you know, we're down to quibbling  
9 between two to four weeks here, which in some of these  
10 discussions is not a lot of time. But it's an important  
11 period of time because we are trying to get to an FSA by May  
12 1st because the diligence on the financing for this project,  
13 which is fairly complex, is scheduled to get underway in  
14 May. And the lenders are going to want to know with some  
15 degree of specificity what the CEC staff's position on the  
16 project is when they commence their diligence. And so  
17 that's really what is driving the schedule and really why  
18 two to four weeks, March 1st versus the middle or end of  
19 March, makes a difference to us.

20           HEARING OFFICER RENAUD: Can you elaborate a  
21 little bit on the financial concerns that may be impacting  
22 the schedule at this time?

23           MR. CARROLL: This is about a \$4 billion capital  
24 investment on the project, which is significantly greater  
25 than the typical Energy Commission project. What that means

1 is that there will be a relatively large group of lenders  
2 involved, lenders' counsel involved, all of them wanting to  
3 conduct extensive due diligence on the project before they  
4 make any commitments. And so we are anticipating that that  
5 process is going to take longer than it would for funding of  
6 a typical project and therefore we need to get it underway  
7 sooner than we typically would and the schedule right now  
8 has that diligence starting in May of 2013.

9 PRESIDING MEMBER DOUGLAS: Can you help us  
10 understand what portion of that \$4 billion is supported in  
11 some way by the Department of Energy program?

12 MR. CARROLL: Do you want to speak to that point?

13 MR. LERDAL: Yes I can. We have a grant with the  
14 Department of Energy of --

15 HEARING OFFICER RENAUD: Excuse me, would you just  
16 identify yourself.

17 MR. LERDAL: I'm sorry. Mark Lerdal, president of  
18 Hydrogen Energy California.

19 HEARING OFFICER RENAUD: Thank you.

20 MR. LERDAL: We have a grant with the Department  
21 of Energy of \$408 million.

22 PRESIDING MEMBER DOUGLAS: Four hundred and eight  
23 or 480?

24 MR. LERDAL: Eight.

25 PRESIDING MEMBER DOUGLAS: Four hundred eight.



1           MR. LERDAL: What Mike was, Mike Carroll was just  
2 speaking about with respect to this due diligence is  
3 primarily from the Japanese Bank of International  
4 Cooperation, which is related to generically their export/  
5 import agency. And the Japanese Bank of International  
6 Cooperation has pledged -- soft-pledged to begin their due  
7 diligence in May, but with respect to 60 percent of the debt  
8 necessary for this project because one of the primary  
9 suppliers of the gasifier and the power block is Mitsubishi  
10 Heavy Industries. So more specifically, what Mike Carroll  
11 was just speaking about was the fact that the Japanese Bank  
12 of International Cooperation will be leading the due  
13 diligence efforts on behalf of the Japanese banks and they  
14 have set their schedule as kicking off on the 1st of May.

15           PRESIDING MEMBER DOUGLAS: And part of their  
16 interest in investing is supporting the Mitsubishi  
17 involvement in the project; is that what you just --

18           MR. LERDAL: That's correct.

19           PRESIDING MEMBER DOUGLAS: Make sure I understood  
20 that.

21           MR. LERDAL: That's correct.

22           PRESIDING MEMBER DOUGLAS: That's correct. And  
23 the soft-pledge of 60 percent of the debt, that would be 60  
24 percent of the remaining project cost minus the DOE grant?

25           MR. LERDAL: No, they will be -- in a project like

1 this typically there will be 25 percent equity and 75  
2 percent debt so really what we are talking about is  
3 somewhere around a \$2 billion number.

4 HEARING OFFICER RENAUD: All right? Okay. I  
5 guess I have a follow-up question. What would be the  
6 consequence if just for various reasons we weren't able to  
7 get to the FSA by May or the decision by September, as you  
8 have suggested?

9 MR. LERDAL: I think it would probably be a day  
10 for day delay. Honestly, it's not, this doesn't kill the  
11 project, 30 days doesn't kill this project. I don't want to  
12 stand up here and say, if we don't get this done by May 1st  
13 we'll be done for sure. This will be -- we were expecting  
14 to have a financial closing in the fourth quarter of this  
15 year. If it moved it to the first quarter of next year  
16 that's perhaps likely because of this.

17 I think that one of the concerns that the Japanese  
18 group has show to us has been the difficulty in the -- all  
19 the commercial arrangements and the slippage in the schedule  
20 to date and I think there is some concern on our  
21 counterparts there that we don't have as much support from  
22 the federal and state government as they're providing from  
23 their side. So it's more of an art than it is a science but  
24 I don't want to, I don't want to mislead you and say, if we  
25 lose 30 days this project is doomed.

1 HEARING OFFICER RENAUD: Thank you, appreciate  
2 that, okay.

3 In addition to the air district issue the staff in  
4 its status report raised water as a -- go ahead, another  
5 question.

6 PRESIDING MEMBER DOUGLAS: Before the Hearing  
7 Officer goes to another topic I just wanted to ask, and I  
8 know Department of Energy is on the phone. Mr. Detwiler, if  
9 you could maybe give us your sense of the review time that  
10 you think DOE will need to add on to getting the staff  
11 document. That would help the Committee.

12 MR. DETWILER: All right. Well keep in mind that  
13 because it will serve the purposes of NEPA there will need  
14 to be a 45 day comment period, so between the PSA and the  
15 FSA at least. Plus time to respond to those comments.  
16 Comments that go to NEPA issues would be responded to by  
17 DOE, comments that go to exclusively CEC issues would be  
18 responded by the Commission staff, and if there are joint  
19 issues I anticipate us working together on responses. But I  
20 think we can work within the schedule that the Commission  
21 needs between the PSA and the FSA, with the understanding  
22 that we just need to have a 45 day comment period. I  
23 believe but I am not certain that the comment period is 30  
24 days under CEQA but I am not sure of that.

25 PRESIDING MEMBER DOUGLAS: Okay, that's helpful.

1 And I guess I was also asking you whether -- I was asking  
2 you in terms of the time that it will take to get a draft  
3 out. I think it's quite, you know, plausible that you would  
4 need to look at the draft that's written by our staff and  
5 review it and sign off or supplement or edit and that could  
6 take some time. Is your -- is the schedule that was  
7 provided by staff, does that work in your time line and the  
8 review that you are anticipating?

9 MR. DETWILER: I believe so, yes.

10 PRESIDING MEMBER DOUGLAS: Okay.

11 MR. DETWILER: Of course it's always difficult to  
12 predict the review time for a document you have never seen.

13 PRESIDING MEMBER DOUGLAS: Yes it is. Thank you.

14 ASSOCIATE MEMBER McALLISTER: Mr. Detwiler, this  
15 is Commissioner McAllister. Are there any other, sort of,  
16 timing issues or conditions or any other sort of  
17 contingencies that are built into the grant from DOE to this  
18 project that we should know about in that they --  
19 particularly for the schedule, which is the topic we're  
20 talking about right now?

21 MR. DETWILER: The two that you should know about,  
22 one -- and this is sort of the backstop to this whole thing.

23 The federal funds expire on September 30, 2015, they were  
24 appropriated under the Recovery Act. So unless they are  
25 spent by that date they are no longer available to the

1 project.

2           Second, the Department's funding tends to go to  
3 the front end of this project and we are almost as anxious  
4 as the applicant to start to get other private investment  
5 into this. So I don't think -- I think that pretty much  
6 sums up our position right now.

7           PRESIDING MEMBER DOUGLAS: Can I ask,  
8 Mr. Detwiler, just a follow-up question? September 30,  
9 2015, is that a start of construction date or is that a  
10 project on-line date? What's the trigger?

11           MR. DETWILER: No, no, no. The money that DOE is  
12 providing has to actually be spent by then.

13           PRESIDING MEMBER DOUGLAS: Okay, so it's an  
14 expenditure draw down date.

15           MR. DETWILER: Expenditure draw down date. Now it  
16 doesn't -- as long as that money is spent I don't -- that  
17 does not correspond to the start of commercial operations or  
18 I think even the end of construction right now. But we'll  
19 be front -- we'll be paying for the initial construction  
20 activities, assuming that we make a decision to proceed  
21 based on the EIS. But we anticipate that all of the money  
22 that DOE would give to construction would under the current  
23 schedule be spent by September 30, 2015, so none of them  
24 would be lost.

25           PRESIDING MEMBER DOUGLAS: Right. And you're

1 talking about spending the money on construction. Is  
2 equipment purchase another --

3 MR. DETWILER: Yes.

4 PRESIDING MEMBER DOUGLAS: -- eligible for draw  
5 down?

6 MR. DETWILER: Yes.

7 PRESIDING MEMBER DOUGLAS: Okay, thanks.

8 MR. DETWILER: And I just want to clarify too,  
9 we're funding the preliminary design and the permitting  
10 processes that we are in right now as well. Not all of it  
11 but we are contributing to it.

12 PRESIDING MEMBER DOUGLAS: What are you  
13 contributing to the permitting process?

14 MR. DETWILER: We cost-share in the fees for the  
15 design and for, I believe, part of the legal fees and permit  
16 development fees. I can give you a -- I can't speak to what  
17 we're doing but we are cost-sharing in most of the  
18 activities seeking permits and things like that.

19 PRESIDING MEMBER DOUGLAS: You know, that's  
20 helpful and I think that I, at least, would like to  
21 understand that better. Maybe if you can't give us the  
22 details today, if you could give it to us --

23 MR. DETWILER: Right. We can give you the spend  
24 plan for this phase of the project and for the subsequent  
25 phases.

1           PRESIDING MEMBER DOUGLAS: Yes, that would be very  
2 helpful, thank you.

3           MR. DETWILER: Sure.

4           HEARING OFFICER RENAUD: All right, thank you all,  
5 that was an excellent discussion.

6           Let's turn a little bit to the water issue that  
7 was raised in staff's Status Report No. 4 and responded to  
8 in a filing that came in yesterday from applicant. And  
9 since staff raised it maybe I'll let you go first. Why  
10 don't you, you want to summarize for us the water issue and  
11 how that may be impacting the schedule in staff's view?

12          MS. DeCARLO: Sure. And I don't know that this is  
13 fundamentally a schedule issue. We do hope to have a  
14 workshop prior to issuance of the PSA to try and explore  
15 some potential alternatives, we just wanted to raise the  
16 issue and indicate that we still have concerns about the  
17 water supply. We raised these initially in our issues ID  
18 report and we have been trying to sort through the issues.

19          Fundamentally, the project will be using 7500  
20 acre/feet of water and that's a lot. That's a lot.  
21 Probably more than we have seen in a power plant since I've  
22 been here, over a decade, and so that initially raises a  
23 concern. Now it's proposed to be coming from groundwater  
24 with a somewhat high TDS but not necessarily out of the  
25 range of what's usable for the farming that's occurring in

1 the area, so we just want to explore potential alternative  
2 approaches.

3 Our one concern is that the justification for the  
4 use of this water appears to stem from the Buena Vista Final  
5 EIR that instituted this remediation program for the saline  
6 water. Staff's concern is that there doesn't appear to be  
7 any support for the conclusions reached in that FEIR.

8 We have been -- apparently the FEIR refers to  
9 reports that substantiate their conclusion that this program  
10 would be beneficial, would be beneficial to the water in the  
11 area and staff hasn't been able to find those reports. I  
12 know the applicant has tried to provide them and we haven't  
13 received them yet. So that's the one concern, that there is  
14 this reliance on the FEIR and we are not sure that the FEIR  
15 conclusions are fundamentally supported. So we are  
16 investigating that.

17 But ultimately we want to see, is there an  
18 alternative water supply? Is there higher saline water,  
19 higher TDS water out there that perhaps the applicant could  
20 explore or are there other options?

21 So we're hoping -- we plan to release our draft  
22 analysis in the next day or two that identifies our thinking  
23 on the modeling that we were provided from the applicant and  
24 our exploration of the various options that we would like to  
25 pursue or at least discuss further with the applicant. And



1 we are hoping once we release that to schedule a workshop in  
2 early February, I believe, to sort out these issues.

3 HEARING OFFICER RENAUD: So the question that was  
4 coming to my mind as you said staff had concerns about water  
5 was, great, glad you have concerns, but do you need more  
6 information? And you've partially, you have answered that  
7 to some extent by saying you're still looking for these  
8 reports. Is there any other information that staff lacks?

9 MS. DeCARLO: I believe that's fundamentally the  
10 information we're seeking. And we can proceed without  
11 those. I mean, if it ends up that those don't exist then we  
12 would look at the alternatives more closely.

13 HEARING OFFICER RENAUD: Okay. Mr. Carroll, any  
14 response?

15 MR. CARROLL: Yes. Let me say at the outset, we  
16 have a great deal of respect for the water staff at the CEC,  
17 both in terms of their substantive expertise and generally  
18 they are very diligent and good to work with.

19 In this particular case, however, we are very  
20 frustrated. The water supply plan for this project has not  
21 changed. Certain aspects of this project have changed over  
22 the last several years about the water supply plan has been  
23 the same since the original AFC was filed in May of 2009.  
24 So to be sitting here in January of 2013 with the staff  
25 saying that there is additional information that they are

1     lacking is very frustrating to us.

2             And as indicated in the filing that we submitted  
3     yesterday, there was a great deal of activity related to the  
4     water supply plan early on in these proceedings and then it  
5     went essentially radio silence. Our belief had been up  
6     until just prior to the holidays that all of the major  
7     issues related to the water supply plan had been resolved  
8     through those extensive early discussions and that the staff  
9     was writing its PSA section. So we were surprised and  
10    frustrated when this issue arose just prior to the holidays.

11            We don't have any problem moving forward with  
12    another workshop. With respect to the analysis underlying  
13    the Buena Vista Water Storage District Final EIR, it wasn't  
14    until today that I fully understood what it was staff was  
15    referring to in terms of the additional information they  
16    were looking for. We don't believe that exists. I've been  
17    communicating with URS by email since Ms. DeCarlo and I  
18    spoke just before the conference starting. We don't think  
19    there is any additional information there. But I think our  
20    main source of frustration is, if the staff had a request it  
21    should have been made clear prior to now, given that the  
22    water supply plan has been under review for three and a half  
23    years at this point.

24            So we're frustrated. We understand that they need  
25    to do the analysis that they need to do. We are prepared to

1 help them with that in any way that we can. We really need  
2 to avoid having the schedule impacted by any additional  
3 workshops or data collection needs.

4 And finally with respect to the substantive issues  
5 related to the water supply plan. We believe, and the water  
6 storage district believes, that this is a superior water  
7 supply plan. Our filing yesterday included a couple of  
8 letters from the Buena Vista Water Storage District laying  
9 out their justification for that and their enthusiastic  
10 support for this water supply plan. So we think at the end  
11 of the day any substantive concerns that the staff may have  
12 can be resolved in a way that is supportive of the proposed  
13 water supply plan.

14 HEARING OFFICER RENAUD: All right, staff, any  
15 response to that? You're familiar with the two letters that  
16 were attached, I take it?

17 MS. DeCARLO: Yes. And ultimately staff's concern  
18 is that there are assumptions that we haven't seen the data  
19 to support and this is a large amount of water that the  
20 project is proposing to use.

21 And while the supply plan hasn't changed the  
22 average amount of water proposed to be used has changed.  
23 The original project proposed, I believe, around 4800 acre/  
24 feet average with a maximum of 7500 and this project now is  
25 proposing an average and maximum of 7500, so an almost

1 doubling of the average use. So there is concern. We just  
2 want to make sure we are doing a thorough analysis and  
3 ensuring that the ultimate -- what is ultimately permitted  
4 is the best that we can possibly do in terms of minimizing  
5 impacts and complying with our water policy.

6 HEARING OFFICER RENAUD: All right. And these  
7 concerns that staff has regarding water are reflected in  
8 staff's proposed schedule I take it?

9 MS. DeCARLO: Yes, yeah.

10 HEARING OFFICER RENAUD: All right, okay.

11 MS. DeCARLO: And if it ends up that we can't  
12 schedule a workshop prior to issuance of the PSA, whatever  
13 date we're given from the Committee, then we'll hold the  
14 workshop afterwards. We're ready. We've got our analysis  
15 pretty much in draft form, it's just -- it would be nice to  
16 be able to work it over a little bit with the applicant and  
17 see if there is any path forward with some of these  
18 alternatives.

19 HEARING OFFICER RENAUD: Okay. Mr. Carroll, did  
20 you want to say something else? I thought maybe you did.

21 MR. CARROLL: No.

22 HEARING OFFICER RENAUD: No? Okay, all right,  
23 thank you. All right.

24 Also in connection with the schedule we have a  
25 request from Sierra Club in the form of a motion to extend

1 the discovery cutoff. And when I received this I went and  
2 looked -- and as Sierra Club points out, we normally count  
3 the discovery period as 180 days from the date of  
4 determination of data adequacy.

5 In this case, because we are dealing with an  
6 amended AFC, the data adequacy part didn't apply. And if we  
7 count 180 days from when the amendment was filed, or the  
8 amended AFC was filed, that would get us to October 29,  
9 2012. Obviously we are beyond that date. There is still  
10 some discovery going on. Let me ask Sierra Club, since you  
11 have made this request, what date you had in mind because  
12 you did not specify one?

13 MS. ISSOD: Oh, hi, this is Andrea Issod with  
14 Sierra Club.

15 HEARING OFFICER RENAUD: Yes.

16 MS. ISSOD: We were just basically asking to  
17 submit the additional requests that were attached to the  
18 motion.

19 HEARING OFFICER RENAUD: Okay, thank you. And to  
20 get those responded to basically is your request.

21 MS. ISSOD: Right.

22 HEARING OFFICER RENAUD: All right. Mr. Carroll,  
23 did you have a response to Sierra Club's request?

24 MR. CARROLL: Yes. The applicant doesn't have any  
25 opposition to the Sierra Club's request to extend the

1 discovery period for the purpose of propounding those data  
2 requests that were attached to their motion. We have those.  
3 We are already in the process of reviewing them and  
4 starting to prepare responses.

5 HEARING OFFICER RENAUD: All right.

6 MR. CARROLL: So we don't have any problem  
7 responding to those additional data requests.

8 HEARING OFFICER RENAUD: All right. Well that  
9 sounds to me like there is basically an agreement between  
10 the parties as to this matter and so the Committee will not  
11 rule on it. If you get into further, have any further  
12 concerns about it let us know but it sounds as though you  
13 are in good shape here. Does that sound acceptable, Andrea?

14 MS. ISSOD: Yes, thank you.

15 HEARING OFFICER RENAUD: Okay, good, thank you,  
16 all right. Okay.

17 Committee members, do you feel you have enough  
18 information that we could decide on a schedule or is there  
19 further issues you want to bring up with the parties before  
20 we move into any other discussions here? I think we've  
21 pretty much covered it.

22 MR. CARROLL: If I may just add, I did receive  
23 during the course of the proceedings here an email from Dave  
24 Warner at the air district indicating all participating  
25 staff are saying that they think February 1 is doable,

1 meaning issuance of a PDOC by that date. That's just an  
2 additional point of information.

3 HEARING OFFICER RENAUD: All right, thank you,  
4 that's good to know. Okay, good.

5 I think we do have some questions the Committee  
6 Members may wish to ask. Before we move to that let me ask  
7 the parties if they have anything they wish to bring to the  
8 attention of the Committee. Starting with applicant,  
9 anything that we haven't already discussed?

10 MR. CARROLL: Nothing further at this point.

11 HEARING OFFICER RENAUD: Staff?

12 MS. DeCARLO: Nothing further.

13 HEARING OFFICER RENAUD: All right. Any other  
14 party, any intervenor wish to bring anything up with the  
15 Committee, present or on the phone? Let me make sure I've  
16 got --

17 (No response.)

18 HEARING OFFICER RENAUD: All right. I believe we  
19 may have some questions from the Committee Members so let's  
20 proceed with those, thank you.

21 PRESIDING MEMBER DOUGLAS: So I just have a  
22 handful of questions. Could you remind me what the co-  
23 products out of this facility would be, fertilizer and maybe  
24 something else; is that correct?

25 MR. LERDAL: Yes, there will be two types of

1 fertilizer, urea in the pelletized form and urea ammonia  
2 nitrate. There will also be, as part of the process of  
3 gasifying the coal there is quite a bit of sulfur that will  
4 be removed as well. And of course the carbon dioxide.

5 PRESIDING MEMBER DOUGLAS: Okay. And a question  
6 for staff. Is the Department of Food and Agriculture or any  
7 other department of state government involved in permitting  
8 or overseeing fertilizer production? Is that an entity or  
9 are there other entities that we should be talking to?

10 MS. DeCARLO: I am not aware of Department of Food  
11 and Ag's involvement in fertilizer permitting, we definitely  
12 can look into it. I do believe they are involved in  
13 certifying the fertilizer product.

14 PRESIDING MEMBER DOUGLAS: Okay.

15 MS. DeCARLO: I don't know to what extent that  
16 would be involved in our permitting. But we will look into  
17 it and make sure we contact them to see if they're  
18 interested in any aspect of this project.

19 PRESIDING MEMBER DOUGLAS: That would be very  
20 helpful. Because one of the surprises that we don't want to  
21 have is to have another agency show up late in the process  
22 with requirements we weren't aware of or concerns we weren't  
23 aware of. And obviously -- to my knowledge this is the  
24 first Energy Commission project that has involved fertilizer  
25 production so I just want to make sure that we cover our



1 bases there.

2 Another question that I have. You know, to some  
3 degree some of the questions I am asking may be answered in  
4 the staff document and I am not asking you to go into or,  
5 you know, preview the PSA with us at this point in time.  
6 But I am quite interested in understanding more about where  
7 sequestration has been demonstrated nationally or  
8 internationally and how this project takes advantage of  
9 information gained and the most advanced research and  
10 demonstrations that have been done on this topic. I'm just  
11 going to put that out there and hope that it's addressed in  
12 the PSA or subsequent to the PSA.

13 I've got one other thing I might say on the  
14 schedule but I want to know, Commissioner McAllister, maybe,  
15 if you have any other questions go ahead.

16 ASSOCIATE MEMBER McALLISTER: I have one area I'd  
17 like to know more about. And we don't have to, again, we  
18 don't want to dig in too much to the details at this status  
19 conference but just sort of signal areas of interest.

20 Applicant, you have laid out some reasons for the  
21 shift to the Mitsubishi product, the Mitsubishi generation  
22 system, essentially, and the gasifier and everything. So  
23 I'm wondering -- so one impact of that was that you had to  
24 use more coal and less petcoke. And I think to some extent,  
25 from a California perspective, we're producing lots of

1 petcoke here and that petcoke is going to get used somewhere  
2 and it would be kind of nice to sort of, from an industrial  
3 ecology perspective, utilize it in the state. That was kind  
4 of one of the upsides of the original proposal, to dispose  
5 of that petcoke in a way that was innovative and closed  
6 loops.

7           So the fuel cycle to provide more coal and less  
8 petcoke is a change and I just want to understand some of  
9 the drivers. So you've laid out some of them, you know,  
10 it's more efficient, more robust in some ways, and I  
11 understand sort of at the top level but I would like to  
12 understand a little bit more deeply sort of the  
13 technological.

14           And if there are any, the sort of impacts, the  
15 implications of that change or the drivers of that change  
16 from the project, from the overall project perspective.  
17 Sort of financing and maybe the DOE grant has some  
18 conditions on it, I don't know. But those sorts of issues  
19 maybe the representative from DOE could also speak to.

20           I'm interested in sort of understanding the issues  
21 that were driving the decision to change technologies in the  
22 application, with an eye towards understanding the  
23 implications for the fuel cycle and the actual plant that we  
24 would be approving -- that we would be considering.

25           MR. CARROLL: This is Mike Carroll on behalf of

1 the applicant. I don't believe we have on the phone with us  
2 today any representatives from Fluor, who I think would be  
3 in the best position to respond, so let me ask our team,  
4 both at the table and on the phone, if they would like to  
5 respond to that. But what I will also commit to is  
6 following up with a written submission from our complete  
7 technical team. But with that I'll open it up and ask if  
8 anybody on the phone or at the table here today wants to  
9 provide a preliminary response.

10 MR. LERDAL: I can -- this is Mark Lerdal from  
11 HECA. I can provide a fairly top level; I probably won't  
12 give you much more detail than you have. But it's a  
13 combination of commercial and technological factors. The  
14 petcoke is quite a bit more abrasive on the gasifier, for  
15 one. So that that mix, while changing it towards a larger  
16 mix toward the coal actually maintains the gasifier for  
17 quite a bit longer.

18 But, of course, the financing plan that the  
19 Japanese government had in place was very attractive for  
20 making it certain that the project actually got built. You  
21 know, this is a little bit of a chicken and egg, which one  
22 did you go to first. I can tell you that we are quite aware  
23 of this issue and we are doing additional testing on  
24 percentages.

25 A lot of this has to do with what an institution

1 like Mitsubishi Heavy Industries can give us a warranty,  
2 given that petcoke is a product that hasn't been gasified  
3 historically in the quantities that we're talking about.  
4 It's been done on a much smaller scale.

5 One of our principal technological guys and one of  
6 the Fluor guys is headed over to Japan next week to actually  
7 witness a couple more tests with some different factors.  
8 Petcoke, of course, is not as consistent a product as is  
9 coal from a single mine and so that trying to predict how it  
10 acts in the gasifier is much more difficult than it is with  
11 the coal. And then finally let's not forget that the  
12 Department of Energy grant is for coal, it's not for  
13 petcoke.

14 So for us it has been a delicate balance of trying  
15 to understand each and every one of the constituents that we  
16 have, and at the same time trying to make certain that we  
17 have a project that is able to be funded and built and so  
18 that we can actually accomplish the goals that we set up.

19 MR. DETWILER: This is Paul Detwiler from DOE.  
20 Yeah, the grant is conditioned on significant coal use  
21 through the period of DOE involvement, which extends for two  
22 or three years after the start of commercial operation in  
23 what's called the Demonstration Phase.

24 PRESIDING MEMBER DOUGLAS: So, Mr. Detwiler, this  
25 is helpful for the Committee to understand. So when we say

1 significant coal use for, you said the demonstration phase  
2 of the project, is that right?

3 MR. DETWILER: Correct.

4 PRESIDING MEMBER DOUGLAS: Two or three years. Is  
5 it two years or --

6 MR. DETWILER: After commercial operation.

7 PRESIDING MEMBER DOUGLAS: Two or three years  
8 after commercial operation. What is "significant coal use?"  
9 Is that measured by the amount of coal or the percentage of  
10 coal?

11 MR. DETWILER: It's a percentage. We have chose  
12 to measure it as a percentage of the feedstock.

13 PRESIDING MEMBER DOUGLAS: So you've chosen to  
14 measure it as a percentage of the feedstock as opposed to an  
15 absolute amount of --

16 MR. DETWILER: Yes.

17 PRESIDING MEMBER DOUGLAS: So for example --

18 MR. DETWILER: And it works well because, again,  
19 after DOE's involvement we don't have the authority or the  
20 purview to, you know, dictate operations after our  
21 involvement has ended.

22 PRESIDING MEMBER DOUGLAS: I see. And are there  
23 other projects that are being funded out of the same, the  
24 same kind of pot of Recovery Act money that are similar to  
25 this or that try to achieve, try to demonstrate similar

1 things? Or is this --

2 MR. DETWILER: Yes.

3 PRESIDING MEMBER DOUGLAS: Okay. Can you tell us  
4 what those are?

5 MR. DETWILER: Well there is one in Texas, which  
6 would make fertilizer and CO<sub>2</sub> and electricity as well. I  
7 don't, I'm not sure whether they plan to burn any petcoke at  
8 all.

9 There are a number of projects that intend to  
10 sequester CO<sub>2</sub> in geological formations like saline  
11 formations without any enhanced oil recovery and those, I  
12 believe, plan to use exclusively coal.

13 And then there are similar projects but are funded  
14 under a different statutory authority that use CO<sub>2</sub> from  
15 industrial sources. And those are not required to use coal,  
16 although some of them may. But they also come from like  
17 methane reformulation and things like that from commercial  
18 chemical plants.

19 But this program, the Clean Coal Power Initiative  
20 program, requires significant coal use by the project to  
21 qualify for DOE funding.

22 ASSOCIATE MEMBER McALLISTER: And Mr. Detwiler,  
23 what is that percentage that DOE is operating under, the  
24 requirement?

25 MR. DETWILER: We don't have a fixed percentage

1 but, you know, it would have -- it can't be a de minimis  
2 amount.

3 ASSOCIATE MEMBER McALLISTER: Okay.

4 MR. DETWILER: We don't have a -- there is no  
5 statutory cutoff line as to what's significant.

6 ASSOCIATE MEMBER McALLISTER: Okay, thanks.

7 PRESIDING MEMBER DOUGLAS: So you don't have a  
8 cutoff in statute or in the program guidelines that defines  
9 what is significant?

10 MR. DETWILER: I don't believe we do, no.

11 PRESIDING MEMBER DOUGLAS: Okay. I guess just as  
12 a --

13 MR. DETWILER: And remember -- yeah.

14 PRESIDING MEMBER DOUGLAS: Go ahead.

15 MR. DETWILER: I mean, remember, we were sort of  
16 on the other side of this issue with the first iteration of  
17 this project that wanted to use exclusively petcoke. And we  
18 had to make sure that they were going to use significant  
19 amounts of coal during the demonstration phase for that,  
20 that iteration.

21 PRESIDING MEMBER DOUGLAS: I see. So I think, you  
22 know, just speaking for myself, it would be helpful to me to  
23 understand more about what "significant" is. And to the  
24 degree that it is defined in the guidelines or defined in  
25 some way, that would be really helpful to me to understand.

1           And I would also be really interested in, you  
2 know, even getting a list of these other projects that are  
3 being funded that are similar to this one, both the ones  
4 that are tied to the clean coal power program and the ones  
5 that are also demonstrating other aspects of sequestration  
6 from industrial processes, as you said. That would be  
7 helpful background for the Committee.

8           MR. DETWILER: Okay.

9           ASSOCIATE MEMBER McALLISTER: Great. And I'll  
10 just add to Commissioner Douglas' request. It would be very  
11 helpful for the Committee to have a sense of what the  
12 potential scenarios are, at least a plan for getting to some  
13 potential scenarios for the fuel cycle or the feedstock  
14 issue going forward. And so, you know, really fundamentally  
15 how locked in are we to one, one approach for fueling the  
16 plant or how much flexibility, you know, will there be going  
17 forward? I think that's important to know.

18          MR. DETWILER: I trust that that seems to me to be  
19 a question for the applicant, not for DOE.

20          ASSOCIATE MEMBER McALLISTER: Yes. Sorry, I was  
21 actually looking at the applicant when I was talking so  
22 thank you.

23          MR. DETWILER: Okay, sorry. I just wanted to make  
24 sure I knew what my homework was. I take it for the first  
25 request you would like to know sort of the fuel sources for



1 those various projects?

2 PRESIDING MEMBER DOUGLAS: Yes, that would be --

3 MR. DETWILER: Your request.

4 PRESIDING MEMBER DOUGLAS: That would be very  
5 helpful, the fuel sources and the actual amounts of coal.  
6 Because to my way of thinking, both could be relevant to  
7 thinking how much is, you know, what is a significant amount  
8 of coal use. That would be --

9 MR. DETWILER: Okay. I'll see what I can do.

10 PRESIDING MEMBER DOUGLAS: That would be  
11 extraordinarily helpful. And also, you know, we may look at  
12 that list and we may see some projects that we might want to  
13 know more about because they may speak to technical issues  
14 that come up in this case and so having that list as a  
15 starting point would be really helpful to us.

16 MR. DETWILER: Okay, we'll provide that.

17 PRESIDING MEMBER DOUGLAS: I just have one more  
18 comment on the schedule, not really a question. It's  
19 important to the Energy Commission to move projects  
20 expeditiously, even when there are complicated issues and  
21 even when there is a need for information gathering. We  
22 have an iterative process that facilitates information  
23 gathering really through the process. I am going to be very  
24 focused on the schedule and our ability to stay on schedule.

25 At the same time I do have to say that I found

1 myself struggling with the implication that we had been  
2 studying a certain issue for three and a half years. I  
3 think that for some of the three and a half years this  
4 project was on inactive status and I don't know if it was a  
5 year or so of that time. So I want to just --

6           We are picking up a complex amendment, there are  
7 some significant project changes. Not everything has  
8 changed. And it is absolutely right that where water source  
9 or something like that has not changed we should be able to  
10 pick up and move forward much more quickly when it has not  
11 changed.

12           But at the same time I just want to be clear that  
13 we are all speaking the same language when it comes to the  
14 schedule. It is very important to me that this process stay  
15 on schedule and that we move forward and resolve issues. I  
16 think we also need to recognize that there was a period in  
17 which this application was waiting for changes that took  
18 some time to work through and now that it's here before us I  
19 want it to move as expeditiously and on schedule as we  
20 possibly can. Thank you.

21           HEARING OFFICER RENAUD: Okay, thank you. And  
22 just to follow up on the question that was asked a while ago  
23 about co-products from the project. I am not sure I heard  
24 mention of the ammonia. And just looking at the amended AFC  
25 it looks like anhydrous ammonia, I believe it would be, and

1 with the option of directly selling it rather than using it  
2 on site. Is that still -- I see you shaking your head.

3 MR. LERDAL: This is Mark Lerdal from HECA. No, I  
4 believe -- I'm not sure when we -- it was during some period  
5 during the question and answer period in the discovery, but  
6 we have eliminated anhydrous ammonia as a product.

7 HEARING OFFICER RENAUD: I just wanted to make  
8 sure about that. All right, thank you, great.

9 MR. CARROLL: And just to amplify that. There was  
10 some question about consistency of the manufacturing complex  
11 with the underlying zoning and general plan and certain --  
12 manufacture of products for certain uses are permissible  
13 under the existing zoning and general plan designation  
14 whereas manufacture of products for certain other uses may  
15 not. And so there were some modifications, as Mr. Lerdal  
16 indicated, relative to what was contained in the amended AFC  
17 to ensure that the project was consistent with the  
18 underlying zoning in the general plan amendment. So that  
19 was really the driver for some of those changes in the  
20 project mix.

21 HEARING OFFICER RENAUD: All right, great, thank  
22 you. If the Commissioners don't have anything further I  
23 think we can move to public comment. I'll just say that the  
24 Committee will take under advisement everything you have all  
25 told us today and come up with a revised schedule. It

1 probably won't please everybody, it might not please  
2 anybody, but it will be what looks to the Committee to be  
3 the best compromise between expedition and thoroughness.

4           Okay. Let me ask if -- I don't see that any of  
5 the intervenors have joined us by phone but if you have why  
6 don't you identify yourselves at this time, other than  
7 Ms. Issod from the Sierra Club.

8           (No response.)

9           HEARING OFFICER RENAUD: All right.

10          MS. ISSOD: And --

11          HEARING OFFICER RENAUD: Go ahead.

12          MS. ISSOD: I do have a, I have a follow-up  
13 question if that's okay?

14          HEARING OFFICER RENAUD: Please, go ahead.

15          MS. ISSOD: Great. It might have just been that I  
16 was unable to hear the discussion about the amount of coal  
17 use related to DOE's funding. Did you have a -- do you have  
18 a specific requirement with regards to HECA on a percentage  
19 of coal that this project must burn for the first few years?

20          HEARING OFFICER RENAUD: I take it you're  
21 directing your question to Mr. Detwiler?

22          MS. ISSOD: Yes.

23          HEARING OFFICER RENAUD: All right.

24          MR. DETWILER: I'm here. Their plan to use 75  
25 percent coal satisfies our statutory requirement that the

1 projects that get funded from these monies use coal, have  
2 significant use of coal.

3 MS. ISSOD: Okay.

4 MR. DETWILER: And that's not to say -- I have a  
5 task to answer the Commission to see whether we have any  
6 more specificity than that. I mean it's --

7 MS. ISSOD: Okay.

8 MR. DETWILER: That was the proposal made by the  
9 applicant and we deemed that significant. That's not to say  
10 that we wouldn't have deemed 80 or 60 or 40 or 90. I mean  
11 (WebEx interference) significant -- sufficient either, so.

12 MS. ISSOD: Okay. So your contract documents  
13 don't specify that it must go above a certain percentage.

14 MR. DETWILER: We would have a problem if suddenly  
15 the plant burned 100 percent petcoke or 99 percent petcoke.

16 MS. ISSOD: Okay, thank you.

17 MR. DETWILER: That kind of change would have to  
18 be approved by the Department. But I do need to find out  
19 whether we have guidelines or other, you know, ceilings or  
20 thresholds or minimum amounts.

21 ASSOCIATE MEMBER McALLISTER: I guess I would just  
22 point out, this is Andrew McAllister. It seems like in some  
23 ways if technologically you could use more petcoke, then  
24 given the difficulty of that as a feedstock, it sort of  
25 proves the concept of -- because coal would be actually

1 easier to do than petcoke. So I guess I'm kind of wondering  
2 -- it would be nice to know sort of what DOE's criteria for  
3 sort of proving technology is. And at a more fundamental  
4 level, just because the project may be able to meet those  
5 needs. Sort of, concept kind of needs, with some additional  
6 flexibility also available.

7 PRESIDING MEMBER DOUGLAS: You know -- this is  
8 Commissioner Douglas. I'll just kind of flip Commissioner  
9 McAllister's comment into a question. Is there anything  
10 that one would not understand about how this technology  
11 applies to coal from a project that uses petcoke? I mean, I  
12 think the premise of his comment or question was that  
13 petcoke presents the same issues with potentially some  
14 additional complications, as opposed to not proving  
15 something. So, Mr. Detwiler, we would definitely be  
16 interested in your thoughts.

17 MR. DETWILER: My answer is this, is that nothing  
18 gets proven by projects that aren't built. So I will look  
19 at the technical things but, I mean, I will look at the DOE  
20 statutory requirements and guidelines. But my guess is that  
21 this is more driven by the technological envelope for the  
22 turbines and gasifiers and I am way out of my depth now,  
23 rather than -- rather than DOE statutory requirements. As I  
24 said, the only question we had was with the previous  
25 iteration where there was a plan to burn 100 percent petcoke

1 and we were certain that that did not meet the statutory  
2 requirements for funding under this program.

3 ASSOCIATE MEMBER McALLISTER: And this is not to  
4 impugn the economic and financial issues. So I just want to  
5 be clear this is a technological discussion right now.

6 MR. LERDAL: This is Mark Lerdal again. There is  
7 one other commercial issue that I didn't mention and that  
8 has to do with the way coal is sold as opposed to the way  
9 petcoke is sold. Petcoke is a commodity that is not subject  
10 typically to long-term supply contracts. As the Commission  
11 knows, a high percentage of it is exported to India,  
12 Indonesia and China for combustion. And a lot of that has  
13 to do with really some of the short-term spot markets in the  
14 Far East.

15 With coal, typically they want a -- the supplier  
16 wants a longer contract so that he can make the capital  
17 investment at the mine so that it knows that it can recover  
18 its investment. Finally, I have one little bugaboo that I  
19 want to, that I want to mention. We don't burn coal, we  
20 will gasify it.

21 PRESIDING MEMBER DOUGLAS: We definitely hear you  
22 on that last point.

23 ASSOCIATE MEMBER McALLISTER: Point taken.

24 PRESIDING MEMBER DOUGLAS: Point taken. I was  
25 intrigued by your description of the difference in the

1 market for petcoke versus coal. Are there commercial  
2 barriers to long-term contracts for petcoke or is it more  
3 just that that isn't typically done?

4 MR. LERDAL: Primarily commercial barriers. It's  
5 been described as either a byproduct of the refining  
6 process, but of course it is not a byproduct because it is a  
7 product that is sold. But it's thought of in the refining  
8 business as a byproduct and therefore it changes -- its  
9 composition is changed each time a different supply of crude  
10 oil is used. And so its quantity is different, its makeup  
11 is different, the constituent parts that are taken out.  
12 Each different refinery has a different footprint for its  
13 petroleum coke.

14 You know, again, perhaps we could get a longer  
15 term. But one of the concerns is that the price -- not only  
16 the -- not only the quantity and the quality but the price  
17 fluctuates so much. So we would be talking to an  
18 organization like BP, Valero, one of these, where  
19 historically it's been somewhat additional income. If the  
20 commercial operator at the refinery were to set the long-  
21 term price too low it wouldn't be a great career move. If  
22 it would be too high perhaps we couldn't get financed. So  
23 we have been working on this, of trying to think about some  
24 sort of artificial hedge or some sort of other long-term  
25 contract but to date we haven't been successful.



1           PRESIDING MEMBER DOUGLAS: You know, your answers  
2 are very helpful and they always spark more questions and so  
3 I'm going to do it to you again. But you should feel free  
4 to defer answers to some of these questions too if you feel  
5 a need to.

6           The question that came to me as you were speaking  
7 is, how big a difference does the variation in say  
8 composition or makeup of the petcoke make for the gasifier?

9     Is that a big deal, is that an important nuance but  
10 potentially manageable? I mean, is that one of the warranty  
11 issues that you're thinking about? I am just trying to  
12 understand what the level of variation is and how that  
13 affects the gasifier. Because I definitely hear you that  
14 the refining industry sees petcoke as something of a  
15 byproduct and they certainly aren't currently geared up to  
16 producing consistent, uniform petcoke for someone who cares  
17 about more subtle distinctions.

18          MR. LERDAL: Well, let's start with this. I think  
19 the refineries are doing everything they can to eliminate  
20 petcoke, right. Because everything that ends up as petcoke  
21 means it is not being used as one of the products that they  
22 can get a more premium price.

23          So I am not going to be able to answer most of  
24 your question but I can add -- because you made me think of  
25 another part. We are now testing the solids that come out

1 of the gasifier. We're trying to find, because we are  
2 obligated to find, some use for those because the last thing  
3 we want to do is have all those end up in a landfill.

4           So once again, the consistency of the coal, we'll  
5 be able to find a gasifier solid that will -- you know, we  
6 can understand what the use is going to be. Once we  
7 reintroduce petcoke with all of its constituent bad guy  
8 products in it, it makes that a little more difficult as  
9 well. So we will get some answers for you on, on the --  
10 what the nasties do to the gasifier, but it is a big deal.

11           PRESIDING MEMBER DOUGLAS: Okay. Well it will  
12 definitely help us to understand more as we go through the  
13 process. And thanks for your helpfulness in answering  
14 questions today.

15           MR. CARROLL: Let me just reiterate, we certainly  
16 appreciate the Committee's questions and interest in this  
17 topic so I'll reiterate my offer that we will follow-up with  
18 a written submission. As you've gathered from this  
19 exchange, the fuel mix is driven by a number of complicated,  
20 regulatory, technical, commercial issues. But we'll spin  
21 all of those out in a written submission and provide that to  
22 the Committee.

23           ASSOCIATE MEMBER McALLISTER: Thank you very much.

24           HEARING OFFICER RENAUD: Okay, thank you. Let's  
25 once again ask if there is any party, either present or on

1 the phone, who wishes to address the Committee or ask a  
2 question before we move to public comment?

3 (No response.)

4 HEARING OFFICER RENAUD: All right, hearing none,  
5 let's move to public comment. Let me ask first if there is  
6 anyone present here in the room in Sacramento who wishes to  
7 come forward and make comment?

8 (No response.)

9 HEARING OFFICER RENAUD: Apparently not. Is there  
10 anyone on the phone who wishes to address the Committee and  
11 make a public comment?

12 (No response.)

13 HEARING OFFICER RENAUD: Apparently not, all  
14 right. All right, thank you very much for your  
15 participation. The Committee will now adjourn to closed  
16 session for deliberation of the matters discussed here  
17 today. After that I will return and formally adjourn the  
18 meeting but this will end the public participation portion  
19 of the meeting at this time. Thank you again.

20 (The Committee adjourned into  
21 closed session at 11:44 a.m.)

22 (The Committee reconvened from closed  
23 session at 11:53 a.m., had nothing to  
24 report and immediately adjourned.)

25 --oOo--

## CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Status Conference; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said conference, or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of January, 2013.

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JOHN COTA

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January 22, 2013